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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140529461-4526-01]

RIN 0648-BE26

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Based on request from the U.S. Food and Drug Administration, NMFS proposes to lift the closure area referred to as the Northern Temporary Paralytic Shellfish Poisoning Closed Area for bivalve harvesting. NMFS takes this action because this area has not been subject to a toxic algal bloom for several years and testing of bivalve shellfish has demonstrated toxin levels well below those known to cause human illness. In addition, the U.S. Food and Drug Administration has developed an agreement with the Commonwealth of Massachusetts to conduct paralytic shellfish poisoning monitoring of bivalves from the area in accordance with currently accepted paralytic shellfish poisoning testing procedures.

DATES: Comments must be received on this action by [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0073, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0073](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0073), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- Mail: John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Lift PSP Closure.”

Instructions: All comments received are part of the public record and will generally be posted to [www.regulations.gov](http://www.regulations.gov) without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, phone: (978) 281-9177, or [Jason.Berthiaume@noaa.gov](mailto:Jason.Berthiaume@noaa.gov).

## SUPPLEMENTARY INFORMATION

### Background

In 2005, at the request of the U.S. Food and Drug Administration (FDA), NOAA’s National Marine Fisheries Service (NMFS) closed an area of Federal waters off

the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish due to the presence in those waters of the toxins that cause paralytic shellfish poisoning (PSP). Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

The closure was modified a number of times from 2005-2008, and the remaining closure was subsequently extended from 2008 until 2013. Beginning in 2014, the closure also included a prohibition on the harvest of gastropods.

Recently, NMFS, the FDA, the clam industry, and the Massachusetts Division of Marine Fisheries (DMF) investigated whether this closure is still warranted, and on May 19, 2014, the FDA sent NMFS a letter requesting that we reopen the area known as the Northern Temporary Paralytic Shellfish Poisoning (PSP) Closed Area for bivalve harvesting. This request is based on the premise that the area has not been subject to a toxic algal bloom for several years and testing of bivalve shellfish has demonstrated toxin levels well below those known to cause human illness. In addition, the FDA has developed an agreement with the Commonwealth of Massachusetts to conduct PSP monitoring of bivalves from the area in accordance with currently accepted PSP testing procedures. If the closure is lifted, DMF would test the reopened waters, and if the results yield samples that exceed the threshold for public safety, DMF would inform us to that effect, and we would work with the FDA to reinstate the closure.

If this action is implemented, NMFS would reopen the area referred to as the Northern Temporary PSP Closed Area for bivalve harvesting. This includes the fisheries for Atlantic surfclam and ocean quahog, as well as mussels. The area would remain closed to the harvest of whole or roe-on scallops and gastropods. Whole and roe-on

scallops and gastropods are believed to be more susceptible to PSP and may accumulate and retain much higher levels of toxicity. In addition, sufficient data do not exist to demonstrate that it would be safe to lift the closure for gastropods or whole and roe-on scallops. NMFS, the FDA, and DMF are working with the fishing industry to conduct a research project that would collect samples to help determine whether the area could also be opened to whole or roe-on scallops and gastropods. NMFS is seeking public comments on lifting the closure for bivalves as well as information regarding whole or roe-on scallops and gastropods and PSP in the area.

The areas defined at 50 CFR 648.81(d) and (e), referred to as the Cashes Ledge and the Western Gulf of Maine Essential Fish Habitat Areas (EFH), respectively, overlap with the area that would be reopened. These overlapping EFH areas would remain closed to hydraulic clam dredge gear.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Atlantic Surfclam and Ocean Quahog Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this

proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

The proposed measures would only affect vessels holding an active Federal open access surfclam and/or ocean quahog permit. The SBA defines a small commercial shellfish fishing entity as a firm with gross annual receipts not exceeding \$5 million. In 2012, a total of 42 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under the Individual Fishing Quota system. In addition, 12 vessels participated in the limited access Maine ocean quahog fishery, for a total of 54 participants in 2012. Average 2012 gross income was \$950,000 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 54 commercial fishing entities fall below the SBA size threshold for small commercial shellfish fishing entities, and thus would be considered small entities for the purposes of this analysis.

This rule, if implemented, is expected to have only a slightly beneficial economic impact on affected entities. The surfclam and ocean quahog fishery is managed under an Individual Transferable Quota (ITQ) system, and, since overall quotas are not being changed as a result of this action, no additional harvest would be permitted with this action. However, participating vessels would be able to fish in the Northern Temporary Paralytic Shellfish Poisoning (PSP) Closed Area, in addition to the existing areas open to the harvest of surfclams and ocean quahogs. Those vessels that choose to fish in the area proposed to be opened may experience a reduction in operational costs due to the area's relative close proximity to major fishing ports. As a result, these vessels could see some positive economic impacts. However, these benefits are not

expected to be significant as this fishery is typically market limited and, as mentioned above, the fishery is managed under an ITQ, so it is not expected that there would be an increase in overall landings beyond what is allowed under the ITQ.

In addition, due to the seasonal variability of PSP toxin levels, any or all of the area associated with this action could open or close based on PSP conditions. Given the uncertainty as to whether the area would remain open, and since the fishery is managed under an ITQ system, it is not anticipated that there would be an overall increase in participation in the surfclam and ocean quahog fishery due to the opening of this area. Therefore, because this action only proposes to reopen an area that has previously been closed, and because no net change in fishing effort, participation in the fishery, or fishery expenses is expected, this action will not have a significant economic effect on a substantial number of small entities.

#### Reporting and Recordkeeping Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 1, 2014.

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Eileen Sobeck,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 648 is proposed to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.14, paragraph (a)(10)(iii) is revised to read as follows:

§ 648.14 Prohibitions.

(a) \* \* \*

(10) \* \* \*

(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea and any gastropod species, including whelks, conchs, and carnivorous snails, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish and/or gastropods for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43°00' N. lat., 71°00' W. long.;

(B) 43°00' N. lat., 69°00' W. long.;

(C) 41°39' N. lat., 69°00' W. long.;

(D) 41°39' N. lat., 71°00' W. long.; and then ending at the first point.

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[FR Doc. 2014-15803 Filed 07/03/2014 at 8:45 am; Publication Date: 07/07/2014]